

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN SENATE APRIL 22, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 929**

**Introduced by Senator Pavley**

**(Coauthor: Senator Hancock)**

(Coauthors: Assembly Members Brownley, Lieu, Ma, Salas, Saldaña,  
and Torlakson)

February 1, 2010

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~~An act to amend the heading of Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of, and to add Section 25214.2.1 to, the Health and Safety Code, relating to hazardous materials. An act to amend Sections 25214.2, 25214.3, 25214.3.1, 25214.3.3, 25214.4, and 25214.4.1 of, to amend the heading of Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of, and to add Section 25214.3.5 to, the Health and Safety Code, relating to hazardous materials.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 929, as amended, Pavley. Hazardous materials: children's jewelry: heavy metals.

*(1) Existing law prohibits the manufacturing, shipping, selling, or offering for sale of jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law also prohibits any person from taking those actions with regard to children's jewelry, as defined, unless the children's jewelry is made entirely from certain specified materials. Existing law prohibits parties that are*

*signatories to a specified consent judgment from being subject to enforcement under those provisions.*

*This bill would additionally prohibit a person from manufacturing, shipping, selling, offering for sale, or offering for promotional purposes children's jewelry for retail sale or promotional purposes in the state, unless the total concentration level of cadmium in that jewelry contains less than 0.0075% (75 parts per million) by weight and would make conforming changes. The bill would provide that the exemption from enforcement action for signatories to that consent judgment does not apply to this prohibition.*

*(2) Existing law requires the Department of Toxic Substances Control to adopt regulations to establish a process by which chemicals or chemical ingredients in products may be identified and prioritized for consideration as being chemicals of concern and to adopt regulations to establish a process by which chemicals of concern may be evaluated. The department is prohibited from duplicating or adopting conflicting regulations for regulated product categories.*

*This bill would prohibit lead- or cadmium-containing jewelry from being considered as a product category already regulated or subject to pending regulation for purposes of those regulations.*

*(3) Existing law imposes criminal penalties upon a manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead in violation of those provisions or who knowingly and with intent to deceive falsifies any document or certificate required to be kept or produced pursuant to those provisions.*

*This bill would additionally impose those criminal penalties upon a manufacturer or supplier of jewelry containing cadmium, thereby imposing a state-mandated local program by creating new crimes.*

*(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law prohibits the manufacturing, shipping, selling, or offering for sale, or offering for promotional purposes children's jewelry containing lead above a specified concentration.~~

~~This bill would additionally prohibit the manufacturing, shipping, selling, or offering for sale, or offering for promotional purposes~~

children's jewelry containing cadmium equal to, or in excess of, a specified level. The bill would prohibit a manufacturer from replacing cadmium with certain carcinogens or reproductive toxicants.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The heading of Article 10.1.1 (commencing with*  
2     *Section 25214.1) of Chapter 6.5 of Division 20 of the Health and*  
3     *Safety Code is amended to read:*

4  
5     Article 10.1.1. ~~Lead-Containing~~ *Metal-Containing* Jewelry

6  
7     *SEC. 2. Section 25214.2 of the Health and Safety Code is*  
8     *amended to read:*

9     25214.2. (a) ~~On and after March 1, 2008, a~~ A person shall not  
10    manufacture, ship, sell, offer for sale, or offer for promotional  
11    purposes jewelry for retail sale or promotional purposes in the  
12    state, unless the jewelry is made entirely from a class 1, class 2,  
13    or class 3 material, or any combination thereof.

14    (b) Notwithstanding subdivision (a), ~~on and after September 1,~~  
15    2007, a person shall not manufacture, ship, sell, offer for sale, or  
16    offer for promotional purposes children's jewelry for retail sale or  
17    promotional purposes in the state, unless the children's jewelry is  
18    made entirely from one or more of the following materials:

19    (1) A nonmetallic material that is a class 1 material and that  
20    does not otherwise violate the requirements of paragraph (4).

21    (2) A nonmetallic material that is a class 2 material.

22    (3) A metallic material that is either a class 1 material or contains  
23    less than 0.06 percent (600 parts per million) lead by weight.

24    (4) Glass or crystal decorative components that weigh in total  
25    no more than one gram, excluding any glass or crystal decorative  
26    component that contains less than 0.02 percent (200 parts per  
27    million) lead by weight and has no intentionally added lead.

28    (5) Printing ink or ceramic glaze that contains less than 0.06  
29    percent (600 parts per million) lead by weight.

30    (6) Class 3 material that contains less than 0.02 percent (200  
31    parts per million) lead by weight.

1 (c) Notwithstanding subdivision (a), ~~on and after March 1, 2008,~~  
2 a person shall not manufacture, ship, sell, offer for sale, or offer  
3 for promotional purposes body piercing jewelry for retail sale or  
4 promotional purposes in the state, unless the body piercing jewelry  
5 is made of one or more of the following materials:

- 6 (1) Surgical implant stainless steel.
- 7 (2) Surgical implant grade of titanium.
- 8 (3) Niobium (Nb).
- 9 (4) Solid 14 karat or higher white or yellow nickel-free gold.
- 10 (5) Solid platinum.
- 11 (6) A dense low-porosity plastic, including, but not limited to,  
12 Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains  
13 no intentionally added lead.

14 *(d) Notwithstanding paragraphs (1) and (2) of subdivision (d)*  
15 *of Section 25214.3, a person shall not manufacture, ship, sell, offer*  
16 *for sale, or offer for promotional purposes children's jewelry for*  
17 *retail sale or promotional purposes in the state, unless the total*  
18 *concentration level of cadmium present in that jewelry is less than*  
19 *0.0075 percent (75 parts per million) by weight.*

20 *SEC. 3. Section 25214.3 of the Health and Safety Code is*  
21 *amended to read:*

22 25214.3. (a) Except as provided in Sections 25214.3.3 and  
23 25214.3.4, a person who violates this article shall not be subject  
24 to criminal penalties imposed pursuant to this chapter and shall  
25 only be subject to the administrative or civil penalty specified in  
26 subdivision (b).

27 (b) (1) A person who violates this article shall be liable for an  
28 administrative or a civil penalty not to exceed two thousand five  
29 hundred dollars (\$2,500) per day for each violation. That  
30 administrative or civil penalty may be assessed and recovered in  
31 an administrative action filed with the Office of Administrative  
32 Hearings or in a civil action brought in any court of competent  
33 jurisdiction.

34 (2) In assessing the amount of an administrative or a civil  
35 penalty for a violation of this article, the presiding officer or the  
36 court, as applicable, shall consider all of the following:

- 37 (A) The nature and extent of the violation.
- 38 (B) The number of, and severity of, the violations.
- 39 (C) The economic effect of the penalty on the violator.

1 (D) Whether the violator took good faith measures to comply  
2 with this article and the time these measures were taken.

3 (E) The willfulness of the violator's misconduct.

4 (F) The deterrent effect that the imposition of the penalty would  
5 have on both the violator and the regulated community as a whole.

6 (G) Any other factor that justice may require.

7 (c) Administrative and civil penalties collected pursuant to this  
8 article shall be deposited in the Hazardous Waste Control Account,  
9 for expenditure by the department, upon appropriation by the  
10 Legislature, to implement and enforce this article.

11 (d) (1) Notwithstanding subdivision (b), a party that is a  
12 signatory to the amended consent judgment, or a party that is a  
13 signatory to a consent judgment entered in the consolidated action  
14 entitled *People vs. Burlington Coat Factory Warehouse*  
15 *Corporation, et al.* (Alameda Superior Court Lead Case No.  
16 RG 04-162075) that contains identical or substantially identical  
17 terms as provided in Sections 2, 3, and 4 of the amended consent  
18 judgment, shall not be subject to enforcement pursuant to this  
19 article, and an action brought to enforce this article against the  
20 party shall be subject to Section 4 of the amended consent  
21 judgment.

22 (2) The Legislature finds and declares that the amendment of  
23 this subdivision by the act amending this section during the  
24 2007–08 Regular Session of the Legislature is declaratory of  
25 existing law.

26 (3) *This subdivision does not apply to any action brought to*  
27 *enforce subdivision (d) of Section 25214.2.*

28 (e) (1) For the purpose of administering and enforcing this  
29 article, an authorized representative of the department, upon  
30 obtaining consent or after obtaining an inspection warrant pursuant  
31 to Title 13 (commencing with Section 1822.50) of Part 3 of the  
32 Code of Civil Procedure, may, upon presenting appropriate  
33 credentials and at a reasonable time, do any of the following:

34 (A) Enter a factory, warehouse, or establishment where jewelry  
35 is manufactured, packed, held, or sold; enter a vehicle that is being  
36 used to transport, hold, or sell jewelry; or enter a place where  
37 jewelry is being held or sold.

38 (B) Inspect a factory, warehouse, establishment, vehicle, or  
39 place described in subparagraph (A), and all pertinent equipment,  
40 raw material, finished and unfinished materials, containers, and

1 labeling in the factory, warehouse, establishment, vehicle, or place.  
2 In the case of a factory, warehouse, or establishment where jewelry  
3 is manufactured, packed, held, or sold, this inspection shall include  
4 any record, file, paper, process, control, and facility that has a  
5 bearing on whether the jewelry is being manufactured, packed,  
6 held, transported, sold, or offered for sale or for promotional  
7 purposes in violation of this article.

8 (2) (A) An authorized representative of the department may  
9 secure a sample of jewelry when taking an action authorized  
10 pursuant to this subdivision. If the representative obtains a sample  
11 prior to leaving the premises, he or she shall leave a receipt  
12 describing the sample obtained.

13 (B) The department shall return, upon request, a sample that is  
14 not destroyed during testing when the department no longer has  
15 any purpose for retaining the sample.

16 (C) A sample that is secured in compliance with this section  
17 and found to be in compliance with this article that is destroyed  
18 during testing shall be subject to a claim for reimbursement.

19 (3) An authorized representative of the department shall have  
20 access to all records of a carrier in commerce relating to the  
21 movement in commerce of jewelry, or the holding of that jewelry  
22 during or after the movement, and the quantity, shipper, and  
23 consignee of the jewelry. A carrier shall not be subject to the other  
24 provisions of this article by reason of its receipt, carriage, holding,  
25 or delivery of jewelry in the usual course of business as a carrier.

26 (4) An authorized representative of the department shall be  
27 deemed to have received implied consent to enter a retail  
28 establishment, for purposes of this section, if the authorized  
29 representative enters the location of that retail establishment where  
30 the public is generally granted access.

31 *SEC. 4. Section 25214.3.1 of the Health and Safety Code is*  
32 *amended to read:*

33 25214.3.1. (a) A manufacturer or supplier of jewelry that is  
34 sold, offered for sale, or offered for promotional purposes shall  
35 prepare and, at the request of the department, submit to the  
36 department no more than 28 days after the date of the request,  
37 technical documentation or other information showing that the  
38 jewelry is in compliance with the requirements of this article.

39 (b) A manufacturer or supplier of jewelry sold or offered for  
40 sale in this state shall do either of the following:

1 (1) Provide a certification to a person who sells or offers for  
2 sale that manufacturer's or supplier's jewelry, upon the request of  
3 that person.

4 (2) Display the certification prominently on the shipping  
5 container or on the packaging of jewelry.

6 (c) The certification required by subdivision (b) shall attest that  
7 the jewelry does not contain a level of lead *or cadmium* that would  
8 prohibit the jewelry from being sold or offered for sale pursuant  
9 to this article.

10 *SEC. 5. Section 25214.3.3 of the Health and Safety Code is*  
11 *amended to read:*

12 25214.3.3. A manufacturer or supplier of jewelry who  
13 knowingly and intentionally manufactures, ships, sells, offers for  
14 sale, or offers for promotional purposes jewelry containing lead  
15 *or cadmium* in violation of this article is guilty of a misdemeanor  
16 punishable by a fine of not less than five thousand dollars (\$5,000)  
17 nor more than one hundred thousand dollars (\$100,000), by  
18 imprisonment in a county jail for not more than one year, or by  
19 both that fine and imprisonment.

20 *SEC. 6. Section 25214.3.5 is added to the Health and Safety*  
21 *Code, to read:*

22 25214.3.5. (a) *This article does not limit, supersede, duplicate,*  
23 *or otherwise conflict with the authority of the department to fully*  
24 *implement Article 14 (commencing with Section 25251), including*  
25 *the authority of the department to include products in its product*  
26 *registry.*

27 (b) *Notwithstanding subdivision (c) of Section 25257.1, lead-*  
28 *or cadmium-containing jewelry shall not be considered as a*  
29 *product category already regulated or subject to pending*  
30 *regulation for purposes of Article 14 (commencing with Section*  
31 *25251).*

32 *SEC. 7. Section 25214.4 of the Health and Safety Code is*  
33 *amended to read:*

34 25214.4. The test methods for determining compliance with  
35 this article shall be conducted using the EPA reference methods  
36 3050B, 3051A, and 3052, as specified in EPA Test Methods for  
37 Evaluating Solid Waste, Physical/Chemical Methods, SW-846  
38 (Third Edition, as currently updated) for the material being tested,  
39 except as otherwise provided in Sections 24214.4.1 and 25214.4.2,  
40 and in accordance with all of the following procedures:

1 (a) When preparing a sample, the laboratory shall make every  
2 effort to assure that the sample removed from a jewelry piece is  
3 representative of the component to be tested, and is free of  
4 contamination from extraneous dirt and material not related to the  
5 jewelry component to be tested.

6 (b) All jewelry component samples shall be washed prior to  
7 testing using standard laboratory detergent, rinsed with laboratory  
8 reagent grade deionized water, and dried in a clean ambient  
9 environment.

10 (c) If a component is required to be cut or scraped to obtain a  
11 sample, the metal snips, scissors, or other cutting tools used for  
12 the cutting or scraping shall be made of stainless steel and washed  
13 and rinsed before each use and between samples.

14 (d) A sample shall be digested in a container that is known to  
15 be free of lead *and cadmium* and with the use of an acid that is not  
16 contaminated by lead *or cadmium*, including analytical reagent  
17 grade digestion acids and reagent grade deionized water.

18 (e) Method blanks, consisting of all reagents used in sample  
19 preparation handled, digested, and made to volume in the same  
20 exact manner and in the same container type as samples, shall be  
21 tested with each group of 20 or fewer samples tested.

22 (f) The results for the method blanks shall be reported with each  
23 group of sample results, and shall be below the stated reporting  
24 limit for sample results to be considered valid.

25 (g) Test methods selected shall be those that best demonstrate  
26 they can achieve total digestion of the sample material being  
27 analyzed. Test methods shall not be used if they are inconsistent  
28 with the specified application of the test method or do not  
29 demonstrate the best performance or proficiency for achieving  
30 total digestion of the sample material.

31 *SEC. 8. Section 25214.4.1 of the Health and Safety Code is*  
32 *amended to read:*

33 25214.4.1. In addition to the requirements of Section 25214.4,  
34 the following procedures shall be used for testing the following  
35 materials:

36 (a) For testing a metal plated with suitable undercoats and finish  
37 coats, the following protocols shall be observed:

38 (1) Digestion shall be conducted using hot concentrated nitric  
39 acid with the option of using hydrochloric acid or hydrogen  
40 peroxide.



1 (2) The sample size shall be 0.050 gram to one gram.

2 (3) The digested sample may require dilution prior to analysis.

3 (4) The digestion and analysis shall achieve a reported detection  
4 limit no greater than 0.1 percent for samples.

5 (5) All necessary dilutions shall be made to ensure that  
6 measurements are made within the calibrated range of the analytical  
7 instrument.

8 (b) For testing unplated metal and metal substrates that are not  
9 a class 1 material the following protocols shall be observed:

10 (1) Digestion shall be conducted using hot concentrated nitric  
11 acid with the option of using hydrochloric acid and hydrogen  
12 peroxide.

13 (2) The sample size shall be 0.050 gram to one gram.

14 (3) The digested sample may require dilution prior to analysis.

15 (4) The digestion and analysis shall achieve a reported detection  
16 limit no greater than 0.01 percent for samples.

17 (5) All necessary dilutions shall be made to ensure that  
18 measurements are made within the calibrated range of the analytical  
19 instrument.

20 (c) For testing polyvinyl chloride (PVC), the following protocols  
21 shall be observed:

22 (1) The digestion shall be conducted using hot concentrated  
23 nitric acid with the option of using hydrochloric acid and hydrogen  
24 peroxide.

25 (2) The sample size shall be a minimum of 0.05 gram if using  
26 microwave digestion or 0.5 gram if using hotplate digestion, and  
27 shall be chopped or comminuted prior to digestion.

28 (3) Digested samples may require dilution prior to analysis.

29 (4) Digestion and analysis shall achieve a reported detection  
30 limit no greater than 0.001 percent (10 parts per million) for  
31 samples.

32 (5) All necessary dilutions shall be made to ensure that  
33 measurements are made within the calibrated range of the analytical  
34 instrument.

35 (d) For testing plastic or rubber that is not polyvinyl chloride  
36 (PVC), including acrylic, polystyrene, plastic beads, or plastic  
37 stones, the following protocols shall be observed:

38 (1) The digestion shall be conducted using hot concentrated  
39 nitric acid with the option of using hydrochloric acid or hydrogen  
40 peroxide.

1 (2) The sample size shall be a minimum of 0.05 gram if using  
2 microwave digestion or 0.5 gram if using hotplate digestion, and  
3 shall be chopped or comminuted prior to digestion.

4 (3) Plastic beads or stones shall be crushed prior to digestion.

5 (4) Digested samples may require dilution prior to analysis.

6 (5) Digestion and analysis shall achieve a reported detection  
7 limit no greater than 0.001 percent (10 parts per million) for  
8 samples.

9 (6) All necessary dilutions shall be made to ensure that  
10 measurements are made within the calibrated range of the analytical  
11 instrument.

12 (e) For testing coatings on glass and plastic pearls, the following  
13 protocols shall be observed:

14 (1) The coating of glass or plastic beads shall be scraped onto  
15 a surface free of dust, including a clean weighing paper or pan,  
16 using a clean stainless steel razor blade or other clean sharp  
17 instrument that will not contaminate the sample with lead *or*  
18 *cadmium*. The substrate pearl material shall not be included in the  
19 scrapings.

20 (2) The razor blade or sharp instrument shall be rinsed with  
21 deionized water, wiped to remove particulate matter, rinsed again,  
22 and dried between samples.

23 (3) The scrapings shall be weighed and not less than 50  
24 micrograms of scraped coating shall be used for analysis. If less  
25 than 50 micrograms of scraped coating is obtained from an  
26 individual pearl, multiple pearls from that sample shall be scraped  
27 and composited to obtain a sufficient sample amount.

28 (4) The number of pearls used to make the composite shall be  
29 noted.

30 (5) The scrapings shall be digested according to EPA reference  
31 method 3050B or 3051 or an equivalent procedure for hot acid  
32 digestion in preparation for trace lead *or cadmium* analysis.

33 (6) The digestate shall be diluted in the minimum volume  
34 practical for analysis.

35 (7) The digested sample shall be analyzed according to  
36 specification of an approved and validated methodology for  
37 inductively coupled plasma mass spectrometry.

38 (8) A reporting limit of 0.001 percent (10 parts per million) in  
39 the coating shall be obtained for the analysis.

(9) The sample result shall be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, or crystal, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal used in children's jewelry, the following testing protocols for determining weight shall be used:

(1) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(2) The scale used to weigh a component shall be calibrated immediately before the components are weighed using S-class weights of one and two grams, as certified by the National Institute of Standards and Technology (NIST) of the Department of Commerce.

(3) The calibration of the scale shall be accurate to within 0.01 gram.

*SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

1     SECTION 1. ~~The heading of Article 10.1.1 (commencing with~~  
2     ~~Section 25214.1) of Chapter 6.5 of Division 20 of the Health and~~  
3     ~~Safety Code is amended to read:~~

4  
5             Article 10.1.1. Heavy Metal-Containing Jewelry  
6

7     SEC. 2. ~~Section 25214.2.1 is added to the Health and Safety~~  
8     ~~Code, to read:~~

9     ~~25214.2.1. (a) Notwithstanding any other law, a person shall~~  
10    ~~not manufacture, ship, sell, offer for sale, or offer for promotional~~  
11    ~~purposes children's jewelry that contains cadmium equal to, or in~~  
12    ~~excess of, 75 parts per million total weight for retail sale or~~  
13    ~~promotional purposes in the state.~~

14    ~~(b) In complying with subdivision (a), a manufacturer shall not~~  
15    ~~replace cadmium with either of the following:~~

16    ~~(1) A carcinogen rated by the United States Environmental~~  
17    ~~Protection Agency as carcinogenic to humans, likely to be~~  
18    ~~carcinogenic to humans, or possessing evidence suggestive of~~  
19    ~~carcinogenic potential.~~

20    ~~(2) A carcinogen known to the state to cause cancer as listed in~~  
21    ~~the Safe Drinking Water and Toxic Enforcement Act of 1986~~  
22    ~~(Chapter 6.6 (commencing with Section 25249.5)) list of chemicals~~  
23    ~~known to cause cancer or reproductive toxicity.~~

24    ~~(c) In complying with subdivision (a), a manufacturer shall not~~  
25    ~~replace cadmium with either of the following:~~

26    ~~(1) A reproductive toxicant that causes birth defects,~~  
27    ~~reproductive harm, or developmental harm as identified by the~~  
28    ~~United States Environmental Protection Agency.~~

29    ~~(2) A reproductive toxicant listed in the Safe Drinking Water~~  
30    ~~and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing~~  
31    ~~with Section 25249.5)) list of chemicals known to cause cancer or~~  
32    ~~reproductive toxicity.~~

33    ~~(d) Notwithstanding subdivision (c) of Section 25257.1, the~~  
34    ~~department may consider children's jewelry containing cadmium~~  
35    ~~as a product category in the department's implementation of Article~~  
36    ~~14 (commencing with Section 25251).~~

37    ~~(e) This section does not prohibit the department from adopting~~  
38    ~~a stricter standard for children's jewelry containing cadmium~~

1 ~~pursuant to regulations adopted pursuant to Article 14~~  
2 ~~(commencing with Section 25251).~~

O